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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 DR. SUJATA VYAS, an) CV 15-02152 RSWL (DFMx)
13 individual,)
14)
15) Plaintiff,)
16)
17) v.)
18)
19) BHASKAR VYAS, an)
20 individual; NANCY BUNN, an)
21 individual; LOCKHEED MARTIN)
22 PENSION PLAN AND CHAMBERS)
23 QDRO CONSULTING SERVICES,)
24 LLC; CHARLES SCHWAB AND)
25 SCHWAB RETIREMENT PLAN)
26 SERVICES COMPANY AS PLAN)
27 ADMINISTRATOR; COMMITTEE)
28 SOUTHERN CALIFORNIA)
PERMANENTE MEDICAL GROUP)
(SCPMG) PLAN ADMINISTRATOR;)
and DOES 1 through 100,)
inclusive,)
Defendants.)
_____)
)

**ORDER re: DEFENDANT
LOCKHEED MARTIN
CORPORATION'S MOTION TO
DISMISS FOR LACK OF
PROSECUTION [111]**

25 Currently before the Court is Defendant Lockheed
26 Martin Corporation's ("LMC") Motion to Dismiss
27 Plaintiff's Second Amended Complaint ("SAC") for Lack
28 of Prosecution pursuant to Federal Rules of Civil

1 Procedure Rule 41(b) [111]. Having reviewed all papers
2 submitted pertaining to this Motion, the Court **NOW**
3 **FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** LMC's
4 Motion.

5 **I. BACKGROUND**

6 **A. Factual Background**

7 Plaintiff is a California resident who married
8 Defendant Bhaskar Vyas ("Defendant Vyas") in 1981. SAC
9 ¶ 21, ECF No. 63. During the couple's marriage, from
10 October 1985 to February 1992, Defendant Vyas worked
11 for LTV Aerospace & Defense Corporation. Defendant
12 Vyas, at some point during this time period, was
13 enrolled in the Lockheed Plan at issue in this suit,
14 although he claims to not have known about the Lockheed
15 Plan or his enrollment in it.

16 The couple separated in 2003, and in 2009, they
17 obtained a Judgment of Dissolution from the Orange
18 County Superior Court finalizing their divorce. First
19 Am. Compl. ("FAC"), Ex. A, ECF No. 19. Following the
20 Orange County Superior Court entering the Judgment of
21 Dissolution in 2009, court-appointed attorney Defendant
22 Nancy Bunn began drafting Qualified Domestic Relations
23 Orders ("QDROs") regarding the retirement plans to
24 which the couple contributed during the marriage. SAC
25 ¶ 7. It was during this time that Plaintiff moved back
26 into the couple's home and discovered the existence of
27 the Lockheed Plan. Id. ¶ 22. Defendant Vyas claims
28 Plaintiff became aware of the Lockheed Plan when

1 Plaintiff opened a letter concerning the Lockheed Plan
2 dated August 18, 2014, which LMC sent to the couple's
3 home.

4 Following Plaintiff's discovery of the Lockheed
5 Plan, on July 14, 2015, Plaintiff's counsel reached out
6 to LMC to request information regarding the recently
7 discovered Lockheed Plan. Pl.'s Opp'n to LMC's Mot. to
8 Dismiss ("Opp'n"), Ex. A at 2, ECF No. 114-2. On July
9 21, 2015, in response, LMC sent Plaintiff's counsel a
10 letter with the procedures for obtaining a QDRO related
11 to the Lockheed Plan. Id. at 38-39.

12 On December 21, 2015, the Orange County Superior
13 Court finalized the QDROs, which did not make mention
14 of the Lockheed Plan. SAC ¶ 14. The Lockheed Plan
15 does not appear on any QDRO because, as Plaintiff
16 alleges, Defendant Vyas concealed the Lockheed Plan
17 from Plaintiff throughout all court-mandated
18 disclosures and proceedings. Id. ¶ 15.

19 **B. Procedural Background**

20 Plaintiff filed her original Complaint on December
21 28, 2015, which among others, identified Lockheed
22 Martin Pension Plan as a named Defendant.¹ See Compl. ¶
23 7, ECF No. 1. Plaintiff did not serve the Complaint on
24

25 ¹ The Complaint named Bhaskar Vyas; Nancy Bunn, the court-
26 appointed drafter of the couple's QDROs; Lockheed Martin Pension
27 Plan and Administrator, the administrator of the Lockheed Plan;
28 QDRO Consulting Services, LLC, another alleged administrator of
the Lockheed Plan; and Kaiser Permanente Pension Plan and
Administrator, an alleged administrator of the retirement plans
named in the couple's QDROs; as Defendants.

1 any Lockheed Martin entity. Decl. of Joseph Faucher
2 ("Faucher Decl.") ¶ 3, ECF No. 112. Plaintiff filed
3 her FAC on April 5, 2016 [19].² The FAC sought relief
4 against "Lockheed Martin Pension Plan." See FAC ¶ 18,
5 ECF No. 19. Plaintiff did not serve the FAC on LMC.
6 Faucher Decl. ¶ 4, ECF No. 112. Defendant Vyas filed a
7 Motion to Dismiss Plaintiff's FAC on April 19, 2016
8 [27]. The Court granted in part and denied in part
9 Defendant Vyas' Motion to Dismiss on July 28, 2016 with
10 leave to amend [36].³ Defendant Chambers QDRO
11 Consulting Services, LLC ("Defendant Chambers") then
12 filed its Motion to Dismiss Plaintiff's FAC on August
13 22, 2016 [42].

14 On October 6, 2016, the Court issued a Scheduling
15 Order setting a May 30, 2017 discovery cut-off, an
16 August 31, 2017 motion filing cut-off date, and a
17 November 28, 2017 trial date [59]. The Court
18 subsequently granted Defendant Chambers' Motion to
19 Dismiss on November 3, 2016 with leave to amend [62].
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21

22 ² The FAC again named Bhaskar Vyas, Nancy Bunn, Lockheed
23 Martin Pension Plan, and Chambers QDRO Consulting Services, LLC
24 as Defendants. Plaintiff added Charles Schwab and Schwab
25 Retirement Plan Services Company as Plan Administrator as a
26 Defendant. Inexplicably, Plaintiff dropped Kaiser Permanente
Pension Plan and Administrator from the suit, and the Court
dismissed this entity on April 5, 2016.

27 ³ The Court granted Defendant Vyas' Motion to Dismiss as to
28 Plaintiff's securities fraud claims [36]. However, the Court
denied Defendant Vyas' Motion to Dismiss as to Plaintiff's ERISA
claims.

1 Plaintiff filed her SAC on November 24, 2016 [63].⁴
2 Then, on December 15, 2016, the parties entered into a
3 stipulation allowing Plaintiff until January 15, 2017
4 to file a Motion for Leave to File a Third Amended
5 Complaint ("TAC") [68]. The stipulation also indicated
6 that Defendants would not be obligated to respond to
7 the SAC and would have 14 days from the filing of the
8 TAC to respond should the Court grant Plaintiff leave
9 to file the TAC. See Stip. at 2:7-16, ECF No. 68.

10 On December 16, 2016, the Court issued an Order
11 giving Plaintiff until January 13, 2017 to file her
12 Motion for Leave to File a TAC or a stipulation for an
13 order allowing filing of the TAC with a showing of good
14 cause [69]. The Order noted that if Plaintiff did not
15 file a motion for leave to file a TAC by January 13,
16 2017, Defendants would be required to respond to
17 Plaintiff's SAC by January 27, 2017. Order re Stip.
18 for Extension at 2:10-13, ECF No. 69. The Order
19 concluded that "further extension of the deadlines
20 discussed herein is DISFAVORED." Id. at 2:14.

21 Plaintiff filed her Motion for Leave to File a TAC
22

23 ⁴ The SAC again named Bhaskar Vyas, Nancy Bunn, Lockheed
24 Martin Corporation, Chambers QDRO Consulting Services, LLC, and
25 Charles Schwab and Schwab Retirement Plan Services, Inc. as
26 Defendants. The SAC added Committee Southern California
27 Permanente Medical Group (SCPMG) Plan Administrator as a
28 Defendant.

27 The SAC included securities claims against Defendant Vyas
28 that the Court had dismissed in its July 28, 2016 Order [36].
Defendant Vyas then filed a Motion to Strike Portions of the SAC
on January 27, 2017 [73].

1 on January 25, 2017 [70], 12 days after the Court's
2 deadline. Defendants Vyas filed a Motion to Strike
3 portions of Plaintiff's SAC on January 27, 2017 [73],
4 the deadline the Court provided in its December 16,
5 2016 Order [69]. Defendant Chambers filed a Motion to
6 Dismiss Plaintiff's SAC [77] on January 27, 2017.
7 Defendants Vyas and Chambers then filed their
8 Oppositions to Plaintiff's Motion for Leave to File a
9 TAC on February 14, 2017 [86, 87].

10 On May 8, 2017, the Court denied Plaintiff's Motion
11 for Leave to File her TAC [96]. That same day, the
12 Court also granted Defendant Chambers' Motion to
13 Dismiss with prejudice and granted Defendant Vyas'
14 Motion to Strike [96].⁵

15 Plaintiff served LMC with the SAC on June 8, 2017.
16 Faucher Decl. ¶ 18. The parties filed a stipulation on
17 June 27, 2017 to extend LMC's deadline to respond to
18 the SAC to July 31, 2017 [108]. LMC then filed the
19 instant Motion to Dismiss for Lack of Prosecution
20 ("Motion") on July 7, 2017 [111]. Plaintiff filed her
21 Opposition on July 18, 2017 [114], and LMC filed its
22 Reply on July 25, 2017 [116].

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24
25 ⁵ Following the Court's granting of Defendant Chambers'
26 Motion to Dismiss, the Court dismissed Defendant Chambers from
27 the suit on May 8, 2017. That same day, the Court also dismissed
28 Defendant Southern California Permanente Medical Group (SCPMG)
Plan Administrator. The remaining Defendants include Bhaskar
Vyas, Nancy Bunn, Charles Schwab and Schwab Retirement Plan
Services Company, and LMC.

II. DISCUSSION

A. Legal Standard

Rule 41(b) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action with prejudice for failure to prosecute or failure to comply with any order of the court. Fed. R. Civ. P. 41(b).

In determining whether to dismiss a claim for failure to prosecute, the court must weigh the following factors:

(1) the public's interest in expeditious resolution of litigation;
(2) the court's need to manage its docket;
(3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.

Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002); see Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999).

B. Discussion

1. Consideration of the Five Factors Warrants Dismissal

Despite her attempts to do so, Plaintiff fails to show sufficient cause as to why the Court should not dismiss this Action against LMC. Plaintiff gives no explanation or excuse for why she failed to serve LMC for 18 months, and instead, she tries to shift blame to the other Defendants, their actions leading up to the filing of this matter, and the "extremely heavy law and motion" that has transpired throughout this litigation. Opp'n at 11:12-16. In her attempt at blame-shifting, she ignores her own egregious actions and complete

1 failure to prosecute this Action against a defendant
2 about which she was aware months prior to commencing
3 this litigation.

4 Upon consideration of the five factors, as
5 discussed below, the Court finds it appropriate to
6 dismiss this Action under Rule 41(b). See Morris v.
7 Morgan Stanley & Co., 942 F.2d 648 (9th Cir. 1991).

8 a. *Public's Interest in Expeditious*
9 *Resolution*

10 In looking to the first factor, "'The public's
11 interest in expeditious resolution of litigation always
12 favors dismissal.'" Pagtalunan, 291 F.3d at 642. The
13 public has an overriding interest in securing "the
14 just, speedy, and inexpensive determination of every
15 action." Fed. R. Civ. P. 1. Federal Rules of Civil
16 Procedure Rule 4(m) advances this interest by providing
17 for dismissal with prejudice where the plaintiff does
18 not serve the complaint on a defendant within 90 days.
19 Fed. R. Civ. P. 4(m).⁶

20 Despite naming LMC in every iteration of the
21 Complaint, Plaintiff did not serve the original
22 Complaint or the FAC on LMC at any point in the
23 litigation and waited seven months after filing the SAC

25 ⁶ Plaintiff erroneously relies on California Code of Civil
26 Procedure section 583.210 to argue that plaintiffs have three
27 years to serve a complaint on a defendant. Opp'n at 5:11-14.
28 "[S]tate procedural rules have no application in federal court."
Makaeff v. Trump Univ., LLC, 715 F.3d 254, 273 (9th Cir. 2013).
As such, the Court need not take into account this inapplicable
citation.

1 to serve it on LMC. In sum, it took Plaintiff 18
2 months to serve any complaint on LMC.

3 Plaintiff provides no excuse for her failure to
4 serve the original Complaint or the FAC on LMC. She
5 instead argues that she could not serve LMC with the
6 SAC because her Motion to File a TAC was pending, and
7 the Court did not determine the operative complaint
8 until May 2017. However, Plaintiff fails to
9 acknowledge that she filed her Motion to File a TAC
10 nearly two weeks after the deadline the Court
11 explicitly provided in its December 16, 2016 Order [69]
12 thus forcing Defendants Vyas and Chambers to respond to
13 the SAC and oppose her Motion to File a TAC
14 simultaneously.

15 Moreover, she does not provide any support for her
16 assertion that she could not serve LMC with the SAC
17 while her Motion to File a TAC was pending. Given the
18 year-and-a-half delay in prosecuting her case against
19 LMC and complete lack of a meritorious explanation for
20 this delay, this factor weighs heavily in favor of
21 dismissal. See Anderson v. Air W., Inc., 542 F.2d 522,
22 525 (9th Cir. 1976) (affirming a district court's
23 dismissal for lack of prosecution after the plaintiff
24 waited a year to serve defendants and offered no
25 explanation for the delay in service); Pearson v. Denny
26 Dennison, 353 F.2d 24, 28 (9th Cir. 1965) (finding no
27 abuse of discretion where district court dismissed case
28 after plaintiff waited 15 months to serve a defendant).

1 b. *Court's Need to Manage its Docket*

2 The Court is responsible for managing its docket
3 "without being subject to routine noncompliance of
4 litigants." Pagtalunan, 291 F.3d at 642. The Ninth
5 Circuit has found that this factor "strongly favors
6 dismissal" where the plaintiff's actions allow her to
7 control the pace of the docket rather than the Court.
8 Yourish, 191 F.3d at 990. Plaintiff asserts that the
9 aggressive litigation of this matter, including
10 multiple attacks to the Complaint, explain the delay in
11 serving LMC. However, such motion practice has no
12 bearing on her ability to serve LMC with any iteration
13 of the Complaint.

14 What Plaintiff ignores, whether purposefully or
15 not, is the fact that she has continuously disregarded
16 the Court's orders and filing deadlines, instead
17 choosing to conduct this litigation as she pleases. On
18 December 15, 2016, the parties entered into a
19 stipulation allowing Plaintiff until January 15, 2017
20 to file a motion for leave to file a TAC [68]. The
21 Court issued an Order on December 16, 2016 giving
22 Plaintiff until January 13, 2017 to file her Motion for
23 Leave to File a TAC. Order re Stip. for Extension at
24 2:2-5. The Order noted that if Plaintiff did not file
25 a motion for leave to file a TAC by January 13, 2017,
26 Defendants would be required to respond to Plaintiff's
27 SAC by January 27, 2017. Id. at 2:10-13. The Order
28 concluded that "further extension of the deadlines

1 discussed herein is DISFAVORED." Id. at 2:14.

2 Despite this Order, Plaintiff filed her Motion for
3 Leave to File a TAC on January 25, 2017 [70], 12 days
4 after the Court's deadline and just two days before the
5 deadline for Defendants to file their responsive
6 pleadings. Because Plaintiff ignored this deadline and
7 filed her Motion for Leave to File a TAC so close to
8 the deadline for Defendants to file their responsive
9 pleadings, Defendants were forced to concurrently
10 respond to Plaintiff's SAC and oppose her Motion for
11 Leave to File a TAC, unnecessarily expending the
12 Court's resources and asserting control over the
13 Court's docket.⁷

14 Then, after the Court issued its Order on May 8,
15 2017 denying Plaintiff's Motion for Leave to File a TAC
16 [96], Plaintiff waited another month to serve LMC with
17 the SAC. Plaintiff has yet to provide a reason for
18 this delay, which resulted in service after the May 30,
19 2017 discovery cut-off.

20 Plaintiff, through her delay tactics, has been
21 permitted to control the Court's docket for too long.
22 As such, this factor weighs in favor of dismissal.

23 *c. Risk of Prejudice to LMC*

24 "[A] presumption of prejudice arises from failure
25 _____

26 ⁷ Plaintiff also violated the Court's Order regarding
27 Defendant Vyas' Motion to Dismiss Plaintiff's FAC [36] by
28 including securities causes of action in her SAC that the Court
previously dismissed. In doing so, Defendant Vyas was then
forced to file a Motion to Strike Portions of the SAC [73].

1 to prosecute," and the burden of proving actual
2 prejudice only shifts to the defendant after the
3 plaintiff has provided a non-frivolous excuse for
4 delay. Hernandez v. City of El Monte, 138 F.3d 393,
5 398 (9th Cir. 1998). As noted above, Plaintiff's
6 excuses for her delay in serving LMC are weak at best
7 and ignore her own delay tactics in direct violation of
8 the Court's orders.

9 Nonetheless, LMC has provided evidence of actual
10 prejudice. "A defendant suffers prejudice if the
11 plaintiff's actions impair the defendant's ability to
12 go to trial" Adriana Int'l Corp. v. Thoeren,
13 913 F.2d 1406, 1412 (9th Cir. 1990). Plaintiff's 18-
14 month delay in serving LMC (and complete failure to
15 serve either the Complaint or FAC) combined with the
16 fact that Plaintiff served LMC after the discovery cut-
17 off implicitly "impair[s] the defendant's ability to
18 proceed to trial." Id.; see Anderson, 542 F.2d at 525
19 ("Delay in serving a complaint is a particularly
20 serious failure to prosecute because it affects all the
21 defendant's preparations."). Without the ability to
22 conduct discovery, LMC cannot properly file dispositive
23 motions or prepare for the November 2017 trial that is
24 quickly approaching. Due to Plaintiff's unreasonable
25 delay, for which she has provided no real explanation,
26 this factor weighs in favor of dismissal. See Pearson,
27 353 F.2d at 28 (Delay "result[s] in an inordinate use
28 of the court's time, to the prejudice of other

1 litigants.").

2 d. *Availability of Less Drastic Alternatives*

3 Plaintiff, in her Opposition, fails to provide a
4 single less drastic alternative to dismissal. Instead,
5 she offers that the delays in litigation were due to
6 "extremely heavy law and motion" and that because she
7 "served Lockheed well within the three year statute [of
8 limitations]," any sanctions, including dismissal, "are
9 not warranted." Opp'n at 11:13-18. Plaintiff is again
10 relying on inapplicable California Civil Procedure in
11 her argument and does nothing to rebut LMC's argument
12 that less drastic alternatives would be inadequate.

13 While Plaintiff offers no alternatives to
14 dismissal, LMC notes that short of a dismissal, this
15 Court has the ability to sanction Plaintiff monetarily
16 or to extend the discovery cut-off and continue the
17 trial date. The Court agrees with LMC's argument that
18 monetary sanctions would not rectify the delay in
19 service and would put LMC in no better place than it
20 was prior to filing this Motion.

21 Additionally, at this point, no party has requested
22 an extension of the discovery cut-off or a continuance
23 of the trial date, and Plaintiff even explicitly states
24 in her Opposition that she is not requesting an
25 extension at this time. Opp'n at 6:25-27. Even if the
26 Court were to continue the trial date, doing so would
27 only reward Plaintiff's delay tactics and failure to
28 abide by this Court's orders. Plaintiff waited 18

1 months to serve LMC, an entity with which she was
2 familiar even prior to the initiation of this
3 litigation,⁸ and continuously violated the Court's
4 Orders resulting in further unnecessary motion practice
5 and litigation. Such bad faith actions should not be
6 rewarded. See Chapman v. Krutonog, No. 08-00579
7 HG-KSC, 2013 U.S. Dist. LEXIS 128965, at *11 (D. Haw.
8 Sep. 9, 2013) (considering less drastic alternatives
9 and holding that this factor weighed in favor of
10 dismissal due to Plaintiff's dilatory conduct
11 throughout the litigation); Anderson, 542 F.2d at 526
12 (finding that "though dismissal is a harsh remedy" it
13 is appropriate when a plaintiff unreasonably delays
14 serving a defendant).

15 Plaintiff notes that an appellate court reviewing
16 the district court's dismissal for failure to prosecute
17 will consider whether the court warned the plaintiff of
18 the possibility of dismissal prior to ordering
19 dismissal. See In re Phenylpropanolamine (PPA) Prods.
20 Liab. Litig., 460 F.3d 1217 (9th Cir. 2006). However,
21 she ignores precedent LMC cites where the Ninth Circuit
22 specifically rejected the need for "an express warning
23 regarding the possibility of dismissal . . . when

24
25 ⁸ In Exhibit 2 to her Opposition, Plaintiff includes
26 correspondence with LMC she sent prior to the commencement of
27 this litigation. While Plaintiff argues that LMC cannot be
28 prejudiced by the delay in service because it knew about the
Action prior to being served, such an argument "is an attempt to
switch the burden of going forward with the action to the
defendants." Anderson, 542 F.2d at 525.

1 dismissal follows a noticed motion under Rule 41(b)."
2 Moneymaker v. CoBen (In re Eisen), 31 F.3d 1447, 1455
3 (9th Cir. 1994).

4 Importantly, the Court, in denying Plaintiff's
5 Motion for Leave to File a TAC, stated "Plaintiff did
6 not explain her delay in filing the Motion to File a
7 TAC and 'such a delay without explanation could appear
8 to be motivated by a desire to unnecessarily prolong
9 the litigation.'" Order re Pl.'s Mot. To File TAC at
10 15:28-16:3, ECF No. 96 (citation omitted). While not
11 an explicit warning regarding the potential for
12 dismissal, this language in the Court's Order placed
13 Plaintiff on notice that the Court was not going to
14 tolerate her bad faith delay tactics in this
15 litigation.

16 Because less drastic alternatives to dismissal
17 would be inadequate in curing the prejudice to LMC that
18 Plaintiff's delay in service caused and because no
19 explicit warning is necessary when dismissal follows a
20 Rule 41(b) motion, this factor weighs in favor of
21 dismissal.

22 e. *Public Policy Favoring Resolution on the*
23 *Merits*

24 "Although there is indeed a policy favoring
25 disposition on the merits, it is the responsibility of
26 the moving party to move towards that disposition at a
27 reasonable pace, and to refrain from dilatory and
28

1 evasive tactics.”⁹ Morris, 942 F.2d at 652. Throughout
2 this litigation, Plaintiff has ignored the Federal
3 Rules of Civil Procedure and this Court’s orders and
4 instead conducted litigation by her own pace and rules.
5 By failing to serve LMC with either the Complaint or
6 FAC and then waiting until after the discovery cut-off
7 to serve LMC with the SAC, she has prevented LMC from
8 properly preparing for trial. See Anderson, 542 F.2d
9 at 525 (finding a delay in service prejudiced the
10 defendants’ ability to plan their defense). Her
11 failure to abide by the Court’s Order regarding
12 Defendant Vyas’ Motion to Dismiss and Order regarding
13 her deadline to file her Motion for Leave to File a TAC
14 has resulted in further delay and unnecessary motion
15 practice. Therefore, Plaintiff’s actions have
16 prevented this matter from moving toward disposition at
17 a reasonable pace.¹⁰ See In re Phenylpropanolamine

18
19 ⁹ While the fourth factor as worded may typically weigh
20 against dismissal, which LMC admits in its moving papers,
21 dismissal may still be appropriate in light of the other four
22 factors. See Pagtalunan, 291 F.3d at 643 (finding district court
23 did not abuse its discretion in dismissing petition with
24 prejudice where three of the five factors weighed in favor of
dismissal); Malone v. United States Postal Serv., 833 F.2d 128,
133 n.2 (9th Cir. 1987) (holding that while this factor may weigh
against dismissal, it is not sufficient to outweigh the other
four factors supporting dismissal).

25 ¹⁰ Importantly, while not a subject of this Motion, the
26 Court has always been of the position that this matter is not
27 properly pursued in federal court due to its overwhelming
28 emphasis on the allocation of property incident to divorce, which
is within the exclusive jurisdiction of state courts. Irish v.
Irish, 842 F.3d 736, 741 (1st Cir. 2016). Thus, the public
policy that would normally favor resolution on the merits is

1 Prods. Liab. Litig., 460 F.3d at 1228 ("[T]his factor
2 'lends little support' to a party whose responsibility
3 it is to move a case toward disposition on the merits
4 but whose conduct impedes progress in that
5 direction."). Other public policies, including
6 judicial economy and protection from harassing
7 litigation, may outweigh the public policy favoring
8 resolution of cases on the merits. As such, this
9 factor does not weigh against dismissal.

10 In considering the five factors, at least four of
11 which weigh in favor of dismissal, the Court finds that
12 dismissal under Rule 41(b) is appropriate due to
13 Plaintiff's inexcusable delay tactics throughout this
14 litigation and unreasonable failure to serve LMC until
15 18 months into the litigation, after the discovery cut-
16 off.

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28 inapplicable here as Plaintiff may not be able to even proceed to
a decision on the merits in this Action.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Defendant LMC's Motion
3 to Dismiss for Lack of Prosecution [111] is **GRANTED.**

4
5 **IT IS SO ORDERED.**

6
7 DATED: August 18, 2017 s/ RONALD S.W. LEW

8 **HONORABLE RONALD S.W. LEW**
9 Senior U.S. District Judge